

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Peter Hoy (S7)	Team: Team # 3	CCRB Case #: 201403040	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/19/2014 5:15 AM	Location of Incident: § 87(2)(b)	Precinct: 52	18 Mo. SOL 9/19/2015	EO SOL 9/19/2015	
Date/Time CV Reported Fri, 03/28/2014 7:45 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 03/28/2014 7:48 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. SGT Michael Burke	00893	918796	052 DET		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. DT3 James McGee	2296	922746	052 DET		
2. DT3 Colin Higgins	1688	936767	052 DET		
Officer(s)	Allegation			Investigator Recommendation	
A.SGT Michael Burke	Abuse: Sgt. Michael Burke supervised the entry and search of § 87(2)(b).				
B.SGT Michael Burke	Abuse: Sgt. Michael Burke refused to show a search warrant to § 87(2)(b).				

Case Summary

On March 28, 2014, § 87(2)(b) filed a complaint via the Civilian Complaint Review Board's website. (encl. 3A-B)

On March 19, 2014, at approximately 5:15 a.m., officers came to the residence of § 87(2)(b) located at § 87(2)(b). The following allegations resulted:

- **Allegation A – Abuse of Authority: Sgt. Michael Burke supervised the entry and search of § 87(2)(b): § 87(2)(g)**

- **Allegation B – Abuse of Authority: Sgt. Michael Burke refused to show a search warrant to § 87(2)(b) § 87(2)(g)**

§ 87(2)(g)

§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) years old on the incident date, § 87(2)(b) is a Hispanic woman, stands five feet and seven inches tall, weighs 220 pounds and has brown eyes and black hair. § 87(2)(b)

CCRB Testimony (encl. 3C-P)

On April 11, 2014, § 87(2)(b) was interviewed at the CCRB. Her statement, summarized below, was generally consistent with her initial complaint and the telephone statement she provided on April 1, 2014.

On March 19, 2014, at what § 87(2)(b) estimated as 5 a.m., she was in her apartment, located at § 87(2)(b), when she heard loud banging on her door. Her daughter, § 87(2)(b) and her daughter's fiancé, § 87(2)(b) were also in the apartment at the time. By the time § 87(2)(b) got to the door, it had been knocked down, and four federal agents with FBI badges had entered her apartment. One of the FBI agents identified himself and informed § 87(2)(b) that they had an arrest warrant for her fiancé, § 87(2)(b). § 87(2)(b) was not home at the time, but he stays at the apartment three to four nights a week, and the apartment is listed as his address. § 87(2)(b) later learned that § 87(2)(b) was found hiding on the roof of a nearby building.

Approximately three NYPD officers also entered the apartment after the FBI agents. One of the officers was identified by the investigation as Sgt. Michael Burke of the 52nd Precinct Detective Squad. § 87(2)(b) described him as a white man in his forties or fifties who stood five

feet and six inches to five feet and nine inches tall, wore plain clothes, had salt-and-pepper hair, had a medium build and had the shield number 389.

Sgt. Burke asked § 87(2)(b) if the officers could search her residence, but she said they could not unless they had a search warrant. Sgt. Burke then said he was going to obtain a warrant and left the location. The other two officers remained by the entrance of § 87(2)(b)'s apartment even after the FBI agents and Sgt. Burke left. The officers told § 87(2)(b) she was free to leave if she wished and was free to move about the apartment, but was prohibited from entering the bedroom. § 87(2)(b) stayed at the apartment. Periodically, different pairs of officers arrived and replaced the two officers standing by the entrance.

At approximately 7 p.m., Sgt. Burke returned with three to six other unidentified officers and rang § 87(2)(b) doorbell. § 87(2)(b) asked Sgt. Burke to see a search warrant and he responded, "I don't have to show you anything," before pushing his way past her into her apartment. In § 87(2)(b)'s telephone statement she attributed this refusal to an unidentified white male officer with red hair; however, in her verified statement, she attributed it to Sgt. Burke.

The officers then searched § 87(2)(b)'s bedroom. During the search, Sgt. Burke damaged § 87(2)(b)'s bed and television, and confiscated numerous items, including clothing, watches, jewelry, a "Samurai sword," a handbag and also removed § 87(2)(b)'s vehicle from a nearby parking lot. The officers left by about 7:30 p.m. without giving her a property voucher for these items.

Notice of Claim (encl. 3Q-T)

According to the Office of the New York City Comptroller, on an unspecified date, § 87(2)(b) filed a notice of claim which states that at the time and place of occurrence, officers including Sgt. Burke came to her apartment, "took numerous items of personal property without justification or a search warrant," and did not leave a voucher for these items. It also claims that officers took her vehicle, license plate number § 87(2)(b). A 50-h hearing has not yet been held.

Witness: § 87(2)(b)

- § 87(2)(b) years old on the incident date, § 87(2)(b) is a Hispanic woman of unknown height, weight and hair and eye color.

Telephone Statement (encl. 4)

On June 2, 2014, § 87(2)(b) provided a telephone statement. Her statement was generally consistent with that of § 87(2)(b). She confirmed that officers entered and searched the apartment. She said that when the officers entered, § 87(2)(b) asked to see a copy of the search warrant, but that the officers pushed past her to enter her bedroom and did not show it to her. She said the officer who § 87(2)(b) asked was a tall, "wide," white man in his 40s.

Attempts to Contact Civilians

§ 87(2)(b) said § 87(2)(b) was also at the apartment on the date of the incident; however, she did not specify that he was present when Sgt. Burke allegedly refused to show her the search warrant. To clarify this, attempts were made to reach § 87(2)(b) by phone and mail, but were unsuccessful. On October 30, 2014, a search of the NYC Department of Correction Inmate Lookup Service indicated that he is not incarcerated.

Fieldwork/Attempts to Obtain Video Footage

§ 87(2)(b) indicated that her building has video cameras that may have captured the officers entering and exiting the building, but would not likely have captured anything that occurred inside her apartment. On April 2, 2014, Inv. Cassandra Fenkle contacted § 87(2)(b), who

§ 87(2)(b) had identified as her building's representative, about obtaining video footage. On April 4, 2014, Inv. Fenkle confirmed an appointment with § 87(2)(b) to pick up the footage. However, on April 7, 2014, when Inv. Fenkle went to § 87(2)(b), she was informed that the video system did not store footage prior to March 25, 2014, and that video footage from the incident date was not available.

NYPD Statements:

Subject Officer: SGT. MICHAEL BURKE

- § 87(2)(b) years old on the incident date, Sgt. Burke is a white man, stands six feet tall, weighs 225 pounds and has green eyes and salt and pepper hair.
- On March 19, 2014, Sgt. Burke worked from 4:30 a.m. to 1:00 p.m., in plain clothes with Det. James McGee in an unmarked vehicle.

Memo Book (encl. 5A-B)

Sgt. Burke made the following memo book entry related to this incident: "0515 § 87(2)(b) w/McGee."

CCRB Testimony (encl. 5C-D)

On June 9, 2014, Sgt. Burke was interviewed at the CCRB. His statement is summarized below.

On March 19, 2014 at approximately 5:15 a.m., Sgt. Burke arrived with Det. McGee at § 87(2)(b). Federal agents and unidentified officers from the Central Robbery Squad were there to execute an arrest warrant for § 87(2)(b). Sgt. Burke was notified over the radio that § 87(2)(b) had escaped from the window, prompting Sgt. Burke to block off a perimeter around the location until Central Robbery Squad officers apprehended him.

Sgt. Burke then instructed unidentified officers from the 52nd Precinct to secure the apartment until a search warrant could be obtained. Sgt. Burke then returned to his command and waited while Det. Colin Higgins obtained the search warrant.

That afternoon Sgt. Burke and Det. McGee met Det. Higgins with the warrant. They knocked on the door of § 87(2)(b)'s apartment and the door was opened by an unidentified officer from the 52nd Precinct who had been in the apartment securing it until the warrant was obtained. Sgt. Burke did not see any additional officers at the apartment. § 87(2)(b) and § 87(2)(b)-year-old man and a four- or five-year-old child were inside. § 87(2)(b) did not request to see the search warrant and Sgt. Burke did not show it to her. Sgt. Burke told § 87(2)(b) he was going to search § 87(2)(b) room. Sgt. Burke, Det. McGee and Det. Higgins then searched the room and removed property they believed to be related to commercial burglaries committed by § 87(2)(b). Sgt. Burke also seized the vehicle that was used in § 87(2)(b) crimes from a parking lot on Jerome Avenue. Sgt. Burke, Det. McGee and Det. Higgins then left and vouchered the property at the command.

Witness Officer: DET. JAMES MCGEE

- § 87(2)(b) years old on the incident date, Det. McGee is a white man, stands six feet and one inch tall, weighs 180 pounds and has blue eyes and brown hair.
- On March 19, 2014, Det. McGee worked from 4:40 a.m. to 10:35 p.m., in plain clothes and assigned to investigations with Sgt. Burke in unmarked RMP number 711.

Memo Book (encl. 5E-G)

Det. McGee made the following memo book entry related to this incident: At 4:40 a.m.,

present at § 87(2)(b) in RMP 711 with Sgt. Burke regarding search warrant burglary pattern § 87(2)(b). At 8:30 a.m., present at 26 Federal Plaza in regards.

CCRB Testimony (encl. 5H-I)

On November 12, 2014, Det. McGee was interviewed at the CCRB. § 87(2)(g)

At the time and place of occurrence, Det. McGee and Sgt. Burke assisted federal agents with a warrant at § 87(2)(b). The federal agents were there to arrest a man with the last name “§ 87(2)(b)” and the NYPD officers were there to assist with perimeter security because they knew the area. Det. McGee had a related robbery case in which § 87(2)(b) was the suspect.

When the agents and officers entered the apartment, § 87(2)(b) escaped out the window, but was subsequently apprehended in a nearby alley. Following the apprehension, Det. McGee met Sgt. Burke in the apartment, where Sgt. Burke observed property that he believed to have been related to burglaries they were investigating. Sgt. Burke informed Det. McGee that he was going to obtain a search warrant to search the rest of the apartment and seize the evidence. Even though the officers were already lawfully inside the apartment, they were present in regards to the federal agents’ arrest warrant, which Det. McGee had not reviewed. Sgt. Burke believed the appropriate course of action was for the officers to get their own warrant before performing any further searches.

Det. McGee then left the location and went to interview § 87(2)(b) who was in federal custody. Det. McGee did not return to § 87(2)(b) with Sgt. Burke after he obtained the search warrant and had no knowledge of whether § 87(2)(b) ever asked to see the warrant or if Sgt. Burke showed it to her.

Witness Officer: DET. COLIN HIGGINS

- § 87(2)(b) years old on the incident date, Det. Higgins is a white man, stands six feet and two inches tall, weighs 238 pounds and has blue eyes and blond hair.
- On March 19, 2014, Det. Burke worked from 8 a.m. to 4 p.m., in business attire and assigned to investigations without a partner in an unknown vehicle.

Memo Book (encl. 5J-L)

Det. Higgins made the following memo book entry related to this incident: “

CCRB Testimony (encl. 5M-N)

On November 13, 2014, Det. Higgins was interviewed at the CCRB. § 87(2)(g)

When Det. Higgins arrived at work on the morning of March 19, 2014, Sgt. Burke instructed him to “swear out” a search warrant for § 87(2)(b). Det. Higgins was at that location earlier that morning, but Sgt. Burke informed him that there had been an apprehension involving federal agents and that the officers needed a warrant to retrieve stolen property from inside the apartment related to numerous burglaries.

After Det. Higgins went to Bronx Court and obtained the warrant, he and Sgt. Burke returned to § 87(2)(b). Precinct officers he could not identify were there and let them in. The officers seized the evidence they believed to be related to the burglaries. Det. Higgins did not know if any civilian asked to see a search warrant and did not recall if Sgt. Burke or any other officers showed it to anyone.

During his CCRB interview, Det. Higgins reviewed the warrant and confirmed that that the address listed on the warrant, § 87(2)(b), was a typographical mistake. He confirmed that § 87(2)(b) was the target of the warrant. He had not noticed this

mistake at the time of the warrant's execution.

NYPD Documents

Search Warrant § 87(2)(b) (encl. 6A-B)

On § 87(2)(b) the Honorable § 87(2)(b) of the Bronx County Supreme Court signed a search warrant that authorized officers to enter § 87(2)(b), § 87(2)(b) search and seize clothing, U.S. currency, jewelry, electronics, any items which might be used for the purpose of committing burglary and any items that tend to indicate ownership or occupancy of the location. The warrant also authorized the search and seizure of a vehicle with the New York State license plate number § 87(2)(b) and a storage locker on West Fordham Road.

Status of Civil Proceedings

- On October 6, 2014, the NYC Office of the Comptroller confirmed that § 87(2)(b) filed a notice of claim in regards to the incident. On November 6, 2014, the NYC Law Department confirmed that no 50-H hearing had yet been scheduled or held.

Civilians Criminal History

- § 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) .

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2B)

Subject Officer CCRB History

- Sgt. Burke has been a member of the service for seventeen years and there have been no substantiated CCRB allegations against him. (encl. 2A)

Conclusion

Identification of Subject Officers

Sgt. Burke acknowledged his role in the incident, both in authorizing the search warrant request and in supervising the search of the apartment. His shield number is similar and his pedigree information matches § 87(2)(b)'s description of the officer who allegedly refused to show her a copy of the warrant. § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pleaded:

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A – Abuse of Authority: Sgt. Michael Burke supervised the entry and search of § 87(2)(b):

It is undisputed that on the morning of March 19, 2014, Sgt. Burke and other NYPD officers assisted federal agents in executing a federal arrest warrant at the location, and observed in plain view evidence relating to a series of burglaries. It is further undisputed that Sgt. Burke secured the location and sent a subordinate detective to obtain a search warrant that would allow him to further search the apartment and seize the evidence. That evening, officers returned and searched the location. The investigation confirmed that they did so pursuant to a Bronx County Supreme Court search warrant.

According to Criminal Procedure Law § 690.05, an officer with a search warrant may enter and search a designated premises and seize designated property. (encl. 1A)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Sgt. Michael Burke refused to show a search warrant to § 87(2)(b)

§ 87(2)(b) alleged that she asked Sgt. Burke to see a copy of the search warrant, and that he refused to show it to her. § 87(2)(b) corroborated this. Sgt. Burke denied that § 87(2)(b) asked to see the warrant and said he did not show it to her. Det. Higgins did not recall Sgt. Burke showing § 87(2)(b) the warrant.

It is undisputed that § 87(2)(b) initially denied the officers permission to search her apartment, requiring Sgt. Burke to leave and obtain a search warrant. § 87(2)(g)

Neither the civilian nor the officer testimonies indicate that Sgt. Burke ever showed § 87(2)(b) the warrant.

According to Criminal Procedure Law § 690.50 (encl. 1F), officers executing a search warrant must give, or make reasonable effort to give, notice of their authority and purpose and show the warrant or a copy of the warrant upon request.

According to Patrol Guide section 212-105 (encl. 1K) an officer executing a search warrant shall, when able to do so safely, show a copy of the warrant to any of the occupants of the premises.

§ 87(2)(g)

Team: 3

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date